

SECTION 21:

INTERAGENCY, JOINT POWERS AGREEMENTS, AND THE UNIVERSITY OF MINNESOTA

Interagency Agreements vs. Joint Powers Agreements

Interagency agreements are between two or more state agencies, while joint powers agreements are between two or more governmental units (See the section on Joint Powers Agreements for the statutory definition of governmental units).

Interagency Agreements

Interagency Agreements are arrangements between state agencies to share resources, do work for each other, share work, etc., to make the best use of state resources. Although these arrangements can take many forms, they are considered agreements. If they are not handled as an agreement, serious problems can and have resulted. OSP's purpose in defining these requirements and highlighting critical points that need to be covered is not to inhibit the sharing of state resources but to ensure that it is done correctly.

The authority of state agencies to enter into agreements between themselves is, in most cases, not clearly defined. Some state agencies have specific statutory authority to enter into these agreements (the Department of Children, Families and Learning, for instance). Most state agencies do not have specific authority, but their authority is defined in the *Joint Powers Act*, which is Minn. Stat. §471.59.

The differences between interagency agreements and professional/technical service contracts are highlighted below.

A Certification Form DOES NOT have to be submitted when entering into an interagency agreement regardless of the total dollar value of the agreement. By its nature, an interagency agreement is using state resources to accomplish the task, so none of the requirements for a certification exist.

The form of the agreement is probably less important than what it includes. Some agencies have developed detailed internal format requirements for interagency agreements, and these should be followed. Other agencies may want to use the format provided below. In either case, the agreement is a contract and should be processed as a contract.

A special clause on workers' compensation is not required because state agencies must already comply with the statute.

A liability clause is included in the contract form. The form states that "each party will be responsible for its own acts." Agencies need to make a purposeful decision on whether to use it. While all state agencies might appear to be a single entity, in fact they are not. Each agency has its own budget and, commonly, its unique and special sources of funds. Therefore, in cases where the liability is high, it is in the best interest of both the paying and performing agency to specifically

define who is liable for what, and when. It is extremely difficult to define *high risk*.

An indemnification clause IS NOT included in the model because one state agency cannot indemnify and hold harmless another state agency.

A clause on Data Practices, Ownership of Materials and Intellectual Property is included. There are different data practices requirements for different agencies and these differences need to be specifically identified and any special requirements spelled out. The decision to leave in the ownerships of materials and intellectual property provisions will depend on the funding source and your agency's internal policies. These can be complex questions.

Finally, on the signature page you will notice that there are only two signatures required. The Attorney General's Office and the Department of Administration do not approve these contracts.

Sample Interagency Agreement

The Sample Interagency Agreement form is available on the OSP website at:



<http://www.mmd.admin.state.mn.us/pdf/interagency.pdf>

<http://www.mmd.admin.state.mn.us/doc/interagency.doc>

Joint Powers Agreements

Joint powers agreements are contracts with other governmental units. Governmental Units includes “every city, county, town, school district, independent nonprofit firefighting corporation, other political subdivision of this or another state, another state, federally recognized Indian tribe, the University of Minnesota, the Minnesota Historical Society, nonprofit hospitals licensed under sections [144.50](#) to [144.56](#), rehabilitation facilities and extended employment providers that are certified by the commissioner of employment and economic development, day training and habilitation services licensed under sections [245B.01](#) to [245B.08](#), and any agency of the state of Minnesota or the United States, and includes any instrumentality of a governmental unit. For the purpose of this section, an instrumentality of a governmental unit means an instrumentality having independent policy-making and appropriating authority.” [Minn. Stat. § 471.59, subd. 1](#). If you have any questions, you should always check with your assistant attorney general BEFORE proceeding.

A joint powers agreement is an arrangement between a state agency and another governmental unit to share resources, do work for each other, share work, etc. Although these arrangements can take many forms, they are considered agreements. If they are not handled as agreements, serious problems can result.

OSP's purpose in defining these requirements and highlighting critical points that need to be covered is not to inhibit the sharing of governmental resources but to ensure that it is done correctly.

BEFORE you enter into discussions that might lead to a joint powers agreement you need to make sure that you have considered several points. Namely, that there is no state agency that can provide

the service.

Under what authority are you seeking to create a joint powers agreement? Unless you have specific, unique statutory authority, there is a critical distinction in law. [Minn. Stat. §471.59](#), subdivision 10, specifically limits the service/tasks that can be performed. It says, *any service or function which the governmental unit providing the service or function is authorized to provide for itself*. While this is not a major issue in all cases, there are instances where a governmental entity's authority is not as broad as that of a state agency and, therefore, this limitation might come into play. Check with your assistant attorney general BEFORE you start the process if you are not certain about the issue of statutory authority.

Are you seeking a service or performance of a task that could be done by more than one governmental entity? If so, you need to consider using a Request for Proposal (RFP), or some other structured mechanism, to announce your need for the service/task, evaluate responses, and make a decision. If you are using state resources, there is an expectation that they will be used equitably and fairly. The use of a formal RFP helps in ensuring equity and fairness. You DO NOT need to announce it in the *State Register*, though that is a way of ensuring equity and fairness. You should, however, send the RFP to every governmental entity that may be able to perform the service/task you need.

The requirement for ensuring every governmental entity access to a potential agreement is especially true of grants made to governmental entities.

The question posed above in dealing with RFPs is not, "we need work done at several different locations." If you have work that needs to be done in several geographically different locations, and there is only one governmental entity in each location that can perform that task, you have a requirement for several joint powers agreements.

Prepayment to Federal Government

*Note: Pursuant to [Minn. Stat. § 16C.081](#), when required by the **federal** agency entering into an intergovernmental contract, an agency may negotiate contract terms providing for full or partial prepayment to a **federal** agency before work is performed.*

Joint Powers Agreements for Professional/Technical Services

If you want to contract with a governmental unit to perform or provide professional/technical services, you should follow the professional/technical contracting procedures discussed in Sections 9 through 15 of this manual. The only difference is that you should indicate that your authority for entering into the contract is also [Minn. Stat. § 471.59](#).

The following is a sample of how you would modify the Recitals section of the professional/technical services contract form to show that you are contracting with a governmental unit for these types of services:

Recitals

1. Under Minn. Stat. §§ 15.061 and 471.59 the State is empowered to engage such assistance as deemed necessary.
 2. The State is in need of [ADD BRIEF NARRATIVE OF THE PURPOSE OF THE CONTRACT].
 3. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.
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A Certification Form MUST BE submitted and approved BEFORE proceeding with a joint powers agreement that exceeds \$25,000. A primary purpose of the certification is to document your efforts to ensure that there are no state employees who could perform the services required and to document your efforts to make all governmental entities who might potentially respond aware of your need for a service or to accomplish a task. If there is ONLY ONE governmental entity that can legally provide the service or perform the task, there is no need to make an effort to consider other governmental entities responses -- just make that clear on the Certification Form. In circumstances where the services proposed to be performed for the state agency involve services that are commonly available through multiple government entities such as training or research services, submit a single source request along with the Certification Form if you believe you must contract with a specific governmental unit. This will allow for the appropriate level of detail to be relayed to facilitate the review process.

Developing an RFP and carefully evaluating the responses you receive is an exercise of fair and open competition. You should have very good reasons why you have not chosen this process when awarding a joint powers agreement. Your decision about what governmental entity to award a joint powers agreement to is no less subject to the open, public, level playing field concepts.

Contract Clauses

An indemnification clause is included in the model agreement. If the governmental unit objects, agencies should make a decision to use the modified version only after consultation with their agency contract coordinator and their assistant attorney general.

No affirmative action clause is included in the model. Minnesota cities and counties were encouraged by the law to obtain a certificate of compliance but one is not required. If your joint powers agreement is with a governmental entity other than a city or county, you should include the standard Affirmative Action language in the agreement.

Data practices, ownership of copyright and documents or rights to a patent, are not addressed in the model agreement, because if these are generally issues only when you are hiring the governmental unit for professional/technical services. In that case you should use the professional/technical contract form.

Sample Joint Powers Agreement

The Sample Joint Powers Agreement form can be found at:



<http://www.mmd.admin.state.mn.us/pdf/jointpowersagreement.pdf>



<http://www.mmd.admin.state.mn.us/doc/jointpowersagreement.doc>

University of Minnesota

Do not use the Interagency Agreement or Joint Powers Agreement for University of Minnesota Contracts. The University of Minnesota has its own contract templates that should be used.

University of Minnesota Sample Contract

The University of Minnesota Sample Contract form can be found at:



<http://www.mmd.admin.state.mn.us/pdf/1051ump.pdf>



<http://www.mmd.admin.state.mn.us/doc/1051ump.doc>

University of Minnesota Sample Contract Optional Language

The University of Minnesota Sample Contract Optional Language form can be found at:



<http://www.mmd.admin.state.mn.us/pdf/umpopts1.pdf>



<http://www.mmd.admin.state.mn.us/doc/umpopts1.doc>